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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 11 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)
)
Revision of Part 22 and Part 90) WT Docket No. 96-18
of the Commission's Rules to)
Facilitate Future Development)
of Paging Systems)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act --)
Competitive Bidding)

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REPLY COMMENTS OF
MOBILE TELECOMMUNICATION TECHNOLOGIES CORP.
ON THE COMMISSION'S INTERIM LICENSING PROPOSAL

Mobile Telecommunication Technologies Corp. ("Mtel")^{1/} and its subsidiary, SkyTel Corporation (collectively, "Mtel"), by their attorneys and pursuant to Section 1.415 and 1.419 of the Commission's rules, respectfully submit their Reply Comments in response to the Commission's Notice in the captioned proceeding.^{2/}

^{1/} Mtel and its subsidiaries, including SkyTel and Destineer Corp. ("Destineer"), are Commission licensees providing a wide range of high technology wireless communications services. SkyTel holds a common carrier nationwide paging license and multiple non-network paging licenses operating over frequency 931.4375 MHz on a nationwide basis. Destineer Corp. was awarded a Pioneer's Preference to operate an advanced nationwide wireless network in the narrowband Personal Communication Service ("PCS") and is currently the only nationwide narrowband PCS service provider. Accordingly, Mtel is well positioned to provide the Commission with informed comment in this proceeding.

^{2/} Notice of Proposed Rulemaking, in WT Docket No. 96-18 and PP Docket No. 93-253, 61 Fed. Reg. 6199 (February 16, 1996) ("Notice"). In the Notice, the Commission requested that reply comments on its interim licensing proposals be filed by March 11, 1996. Accordingly, these Reply Comments are timely filed.

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I. INTRODUCTION

By these Reply Comments, Mtel expresses its continued support of the Commission's intent to greatly streamline the paging application filing process and provide for greater regulatory parity. Mtel also reasserts its concern with certain Commission proposals that would suspend the processing of certain pending applications and prohibit the filing of new applications by incumbent licensees who seek to expand their system to meet market demand. These proposals are unnecessary to meet the Commission's goals and would actually disserve the public interest by preventing existing paging licensees from offering expanded coverage and service options to their customers.

Further, Mtel strongly reiterates its position that the Commission should redesignate 931.4375 MHz as a nationwide channel. This redesignation will promote regulatory parity, formalize the operational status of the channel and serve the public interest.

II. DISCUSSION

Mtel's review of the Commission's files reveals that over fifty parties filed comments in this phase of the captioned proceeding. These comments are near-universal in urging that the Commission process all pending applications filed prior to the issuance of the Notice.^{3/} Also, the vast majority of those commenting on behalf of incumbent licensees urge that they should be able to file applications regardless of whether such

^{3/} See, e.g., Comments of PCIA at 28; MobileMedia at 15; North State Communications at 2 and ProNet at 10.

applications expand existing interference contours, in order to permit them to meet customer demand.^{4/} Further, no commenter objected to the redesignation of 931.4375 MHz as a nationwide channel during the interim licensing phase.

A. Temporary Freeze on Processing of Paging Applications Must Be Lifted

In its Notice, the Commission proposed among other things to (1) suspend the acceptance of new applications for paging channels; (2) accept only those applications proposing to add to or modify existing systems wherein the additions or modifications do not expand the interference contour of the incumbent's existing system; (3) process only those pending non-mutually exclusive applications that were filed as of the adoption date of the Notice, with pending applications being defined as those for which the relevant period for filing competing applications expired prior to the adoption date of the Notice; and (4) hold in pending status mutually exclusive applications until the conclusion of the rulemaking proceeding.^{5/} (Collectively, these proposals are identified herein as the Commission's "Interim Proposal"). The Notice also sought comment on whether to allow carriers to add sites on a secondary basis in order to provide the flexibility needed to expand existing systems.^{6/}

^{4/} See e.g. Comments of ProNet at 8, Paging Partners at 3, Ameritech at 9, and Joint Comments filed by Bryan Cave at 5.

^{5/} Notice at para. 145.

^{6/} Notice, para. 143.

In its Comments, Mtel urged that paging applications submitted to the Commission prior to the release of the Notice should be processed in due course and that the application freeze should be modified to permit incumbent licensees to file applications which may expand existing service contours.^{7/} There is substantial support for Mtel's position in the comments filed by other parties.

There is widespread recognition that equity and fair play require the Commission to process all applications filed before the Notice date.^{8/} See also the comments of PCIA at 28, MobileMedia at 16, and ProNet, Inc. at 10, where it was recognized that such a freeze on the processing of applications is impermissibly retroactive, patently arbitrary and unrelated to the Notice's self-avowed policy goals.^{9/}

^{7/} As Mtel explained in its comments, the Commission's proposals do not fully take into account the business and competitive realities that paging companies face and they virtually eliminate a licensee's ability to timely respond to customers needs for high quality service.

^{8/} As Ameritech Mobile Services, Inc. noted in its comments, procedural fairness requires that the Commission process, in accordance with the rules, any applications for paging facilities that were on file prior to the imposition of the freeze. These applicants followed the Commission's rules expended significant efforts and resources in the preparation of their applications, including engineering studies, legal review and the payment of a filing fee to the FCC. Ameritech Comments, at 6.

^{9/} As ProNet further noted in its comments, the Interim Proposal is a "rule," under the APA. Thus the Interim Proposal's legal consequences must be wholly prospective, unless Congress expressly conveyed the power to promulgate retroactive rules to the Commission. The Communications Act conveys no such express power, and no other statutory basis for such power is cited in the Notice. ProNet Comments, at 12.

Virtually all of the commenters also urge that an incumbent licensee be allowed to expand its system even if such expansion enlarges a licensee's existing interference contours,^{10/} and Mtel concurs with them. See e.g. Comments of ProNet at 8, Paging Partners at 3, Ameritech at 9, and Joint Comments filed by Bryan Cave at 5. Clearly, the ability to modify paging systems is critical to the continued competitiveness of the paging industry as well as providing the public with the service it demands. Moreover, there would be no meaningful cost associated with this modification to the Commission's proposal since the 931 MHz paging service is mature in almost all major markets and there appear to be very few outlying areas in which frequency availability would lend itself to auctions.

Mtel agrees with the numerous other commenters who argued that licensing of additional facilities on a secondary basis only would be detrimental to the public interest.^{11/} See, e.g., Comments of Joint Commenters submitted by Bryan Cave, at 18, and PCIA, at 39. As PCIA explained, some businesses, lenders, shareholders, and financial markets would question the advisability of a licensee

^{10/} Several of the comments such as those of the Joint Comments filed by Bryan Cave at 14 and Ameritech at 9 propose the acceptance of applications which expand the interference contour by adding sites so long as they are within 40 miles of an existing site.

^{11/} In its Notice, the Commission proposed that "during the pendency of this proceeding", incumbents should be allowed to file new applications that would expand or modify their existing systems beyond their existing interference contours with such modification receiving only secondary site authorization. See, Notice at Para. 143.

spending substantial sums of money to construct facilities that the licensee may later have to forfeit. PCIA Comments, at 40. Almost certainly, the multitude of questions that would surround the secondary status would discourage licensees from making meaningful investments in system expansion, and thus improving the service available to the public.

**B. 931.4375 MHz Should Be Redesignated On
A Nationwide Basis**

In the Notice the Commission sought comment on whether to designate the Common Carrier Paging ("CCP") channel 931.4375 MHz, which is licensed to SkyTel on, effectively, a nationwide basis, as constituting a nationwide authorization and thus as not being subject to geographic licensing or the Interim Processing Rules. Notice, at Para. 27. Mtel, in its comments, urged the Commission to extend this redesignation to apply to the Interim Proposal. Not a single commenter took issue with this redesignation. Mtel reaffirms its support of this proposal and reiterates that it would further the Commission's goal of regulatory parity and provision of services to the public.

The Commission has granted exclusivity on a local, regional and nationwide basis to PCP licensees operating multi-site systems based on aggregate area covered by their sites. SkyTel is currently licensed to operate over 700 transmitters on this frequency, which is far ore than necessary to qualify SkyTel for nationwide exclusivity on 931.4375 MHz if it were a PCP channel. PCP licensees with nationwide exclusivity are now free to design

and construct their systems on their assigned frequencies without concern that other applications could be filed thus frustrating their plans for enhancement and growth of their systems. Yet, absent grant of the relief sought herein, SkyTel would be at an enormous competitive disadvantage in that it would not be permitted to expand its system.

As Mtel demonstrated in its comments, the redesignation of 931.4375 MHz would serve the public interest and would not adversely impact any other party. Further, the Commission has recognized SkyTel's unique use of this frequency and has accorded it one key privilege of nationwide status by preempting state regulation of SkyTel's nationwide use of this frequency. Mtel Comments at 4. As this issue is unique to SkyTel, the sole licensee of 931.4375 MHz, redesignation of this channel as being "nationwide" would promote the Commission's goal of creating regulatory parity among CCP and PCP service providers and would facilitate the creation of a level playing field for carriers licensed in the different services.

IV. CONCLUSION

For the reasons set forth above, Mtel urges the Commission to immediately lift its freeze on applications filed with the Commission prior to the Notice date and process them in accordance with the rules then in effect and allow existing licensees to file applications which might expand their existing interference contours.

Further, the Commission should redesignate the frequency 931.4375 MHz as "nationwide". Mtel has demonstrated that such a redesignation would serve the Commission's goals of regulatory parity and serve the public interest.

Respectfully submitted,

MOBILE TELECOMMUNICATION
TECHNOLOGIES CORPORATION

and

SKYTEL CORPORATION

By: 

Thomas Gutierrez
J. Justin McClure

Its Attorneys

Lukas, McGowan, Nace &
Gutierrez, Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 857-3500

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